

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 453/MP/2019

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 15th February, 2023

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 read with Article 12 of the Transmission Service Agreement dated 24.6.2015 entered into between the Petitioner and the Respondents seeking Change in Law compensation.

And

In the matter of:

Sipat Transmission Limited,
C-105, Anand Niketan,
New Delhi – 110 019

.....Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor,
Bandra (East), Mumbai – 400 051.

2. Madhya Pradesh Power Management Company Limited,
Block No. 11, Ground Floor, Shakti Bhawan,
Vidyut Nagar, Rampur, Jabalpur – 482 008, Madhya Pradesh

3. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar,
Dangania, Raipur – 492 013, Chhattisgarh

4. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhawan, Race Course,
Vadodara – 390 007

5. Electricity Department of Goa,
Govt. of Goa, Aquem Alto Margaon Goa – 403 601

6. DNH Power Distribution Corporation Limited,
66kV, Amlu Ind. Estate, Silvassa – 396 230,
Dadar Nagar Haveli

7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OI DC Complex,
Near Fire Station, Somnath Daman-396 210

....Respondents

Parties present:

Shri Gopal Jain, Sr. Advocate, STL
Shri Sourav Roay, Advocate, STL
Shri Prabudh Singh, Advocate, STL
Shri Vishal Malik, Advocate, STL
Shri Kaushal Sharma, Advocate, STIL
Shri Afak Pothiawala, STL
Shri Ravi Prakash, Advocate, MSEDCL
Ms. Nikita Choukse, Advocate, MSEDCL
Shri Pallav Mongia, Advocate, PGCIL
Shri Tushar Srivastava, Advocate, PGCIL
Shri V. C. Sekhar, PGCIL
Shri Prashant Kumar, PGCIL

ORDER

The Petitioner, Sipat Transmission Limited (STL), had filed Petition No. 453/MP/2019 before the Commission under Section 79 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) seeking compensatory relief under Article 12 of the Transmission Service Agreement (TSA) dated 24.6.2015 on account of Change in Law events, which have adversely affected the project cost. The Commission vide order dated 16.6.2021 disposed of the said Petition allowing certain ‘Change in Law’ events as under:

Sr No	Change in Law	Allowed/Disallowed
1	Levy of Swachha Bharat Cess and Krishi Kalyan Cess Levy of Swachha Bharat Cess and Krishi Kalyan Cess	Allowed
2	Increase in effective customs duty on primary aluminium products	Allowed
3	Increase in tax rates due to enactment of the GST Acts: (a) Increase in tax rates application on works contracts (b) Levy of GST on services for electricity transmission (c) Levy of GST on finished transmission line and substation material (d) Levy of GST on Right of Way payments to be made to land owners (e) Levy of GST on transportation of goods on supplier	Allowed Allowed Allowed Allowed Allowed in terms of paragraph 64
4	Increase in compensation towards damages in relation to Right of Way for transmission lines	Allowed
5	Change in configuration of type of towers to ‘D’ – ‘D’ at both sides of the crossing	Disallowed
6	Carrying Cost	Disallowed

2. Aggrieved by the disallowance of change in configuration of towers and carrying cost, the Petitioner challenged the order dated 16.6.2021 of the Commission before Appellate Tribunal for Electricity (In short 'APTEL') by Appeal No. 238 of 2021. APTEL by its judgment dated 27.9.2022 has remanded the matter to the Commission for fresh view after seeking opinion of Central Electricity Authority (CEA) on the issue of change in configuration of towers to 'D'-'D' type towers on both the sides of crossing and subsequent judgments on carrying cost including the APTEL's judgment dated 15.9.2022 in Appeal No. 256 of 2019 & batch in the case of Parampujya Solar Energy Pvt. Ltd. & anr v. Central Electricity Regulatory Commission & ors. The relevant extract of the judgment dated 27.9.2022 is as under:

"4. After some hearing, it is agreed on both sides that the matter would require views of Central Electricity Authority (CEA) to be taken on the issue of change in configuration of towers to 'D' – 'D' type on both sides of the crossing, as was insisted upon by Power Grid Corporation of India Limited (PGCIL) and Chhattisgarh State Power Transmission Company Limited (CSPTCL), the appellant having been statedly constrained to incur additional expenditure on account only of such insistence.

5. In the given facts and circumstances, we remit the issue to the above extent to the CERC for reconsideration, after seeking opinion of CEA. Needless to add, the Commission shall be obliged to hear the parties before it passes a fresh order on this aspect, not feeling influenced or bound by the view taken by the order under appeal.

6. As mentioned earlier, the appeal also agitated the claim for carrying cost with reference to the change in law compensation which has been allowed, part of such claim being under remit as above. In our view, the law has developed over the period on this issue, reliance being placed by the appellant on various decisions including judgment dated 15.09.2022 in Appeal no. 256 of 2019 & batch in the case of Parampujya Solar Energy Pvt. Ltd & anr v. Central Electricity Regulatory Commission & ors.

7. With the consent of both sides, we remit the above said issue as well to the Central Commission for a fresh visit. Needless to add, the Commission shall be bound to follow the law as has been declared by Supreme Court and by this tribunal on the subject. Of course, the Commission will afford the hearing to the parties before deciding that issue afresh. We may add that in case the claim for carrying cost raised by the appellant is upheld by the Commission, it shall be also obliged to quantify the compensation payable and pass all consequential orders in its wake.

8. Nothing in this order shall be construed as an expression of opinion on the issues by us, contentions of both sides being kept open.

9. We would expect the Commission to proceed with the compliance with order of remit as above with the necessary expedition and take a fresh call at an early date preferably within six months from today.”

3. Pursuant to the aforesaid judgment of APTEL dated 27.9.2022, the Petitioner placed on record the copy of the judgment of APTEL vide letter dated 10.10.2022 for passing of order in terms of the directions of APTEL therein.

4. The Commission issued notice to CEA seeking its opinion as per the judgment of APTEL dated 27.9.2022 while providing a copy of the Petition. Thereafter, the matter was listed for hearing on 3.11.2022. However, none appeared on behalf of CEA. After hearing the learned senior counsel for the Petitioner, the Commission directed the CEA to furnish its opinion on the issue of change in configuration of towers to 'D'-'D' type on both sides of the crossing as per the judgment of APTEL dated 27.9.2022 and to depute an officer well acquainted with the facts of case on the next date of hearing. CEA vide its email dated 12.12.2022 has submitted its opinion on the issue of change in configuration of towers to 'D'-'D' type on both side of crossing.

Hearing dated 12.12.2022

5. Vide Record of Proceedings for the hearing dated 12.12.2022, the parties were directed to file their response. The Commission directed the Petitioner to implead PGCIL as party to the Petition and further directed PGCIL to clarify the following:

(a) Whether while crossing Adani's Mundra-Mahinderagarh HVDC line by PGCIL'S Bhuj-Banaskantha line, 'D' type tower on one side whereas 'B' type of the other side; and

(b) In TBCB project, namely Vemagiri and Nagapattanam of PGCIL, whether 'D' type tower on one side and angle tower on the other side have been followed.

6. During the course of hearing, learned senior counsel for the Petitioner circulated note of arguments and made detailed submissions on the issues under remit, namely, (i) change in configuration of towers to 'D'-'D' type towers on both sides of power line crossing being a Change in Law event, and (ii) carrying cost upon the consequential cost. Learned senior counsel, inter-alia, submitted that the inputs/comments of CEA as well as the affidavit filed by PGCIL dated 19.12.2022 clearly indicate that as on cut-off date, there was no requirement under either the CEA Regulations or the Indian Standards or the RfP documents to install 'D'-'D' type towers at both sides of the power line crossing and the said requirement was standardized by CEA in a meeting held on 16.9.2016 (after the cut-off date) and therefore, imposition of such condition in the case of the Petitioner amounts to Change in Law. Learned senior counsel further submitted that in terms of the judgment of Appellate Tribunal for Electricity dated 15.9.2022 in Appeal No. 256 of 2019 ("Parampujya Case"), wherein the APTEL has held that word 'relief' is of widest amplitude, the Petitioner is entitled to carrying cost on its Change in Law claims as the Article 12.2 of the TSA also uses the word 'relief' therein.

7. Learned counsel for the Respondent No.1, MSEDCL and Power Grid Corporation of India Limited (PGCIL) made their detailed submissions. Learned counsel for PGCIL referred to PGCIL's affidavit filed in compliance of the Record of Proceeding dated 12.12.2022 and submitted that PGCIL has been using 'D'-'D' configuration with necessary extension for crossing of power lines and only in some exceptional cases where constraints were faced during detailed survey with regard to the diversion angle, PGCIL has used D-A-D type tower configuration instead of D-D. Learned counsel for MSEDCL, inter-alia, submitted that change in configuration of towers to 'D'-'D' type towers on both sides of power line crossing would not amount

to a Change in Law event under TSA. Learned counsel further submitted that as per the RfP and TSA, the onus of obtaining power line crossing as well as confirming the tower configuration for such crossing was on the Petitioner and it cannot amount to Change in Law. Learned counsel further submitted that the claim of the Petitioner for carrying cost is not maintainable as the judgment of APTEL in Parampujya is distinguishable. Learned counsel added that the wordings “provide relief” appearing in the PPAs in cases before the APTEL, basis which the APTEL has considered the carrying cost relief, are not there in the TSA.

Submissions by the Parties

8. The Petitioner, vide its additional affidavit dated 16.12.2022, has submitted the following:

(a) TSA dated 24.6.2015 was entered into between Sipat Transmission Limited with the various Long Term Transmission Customers, with Maharashtra State Electricity Distribution Company Limited as the Lead LTTC on 24.6.2015. In the present case, the cut of date is 23.6.2015, meaning thereby, that any event which falls within the definition of Change in Law as per Article 12.1.1 of the TSA, and which has taken place after 23.6.2015, entitles the Petitioner to claim “*Relief*” under Article 12.2 of the TSA.

(b) As on the cut of date, there was no requirement for power line crossings with ‘D’ type towers on both sides. The Petitioner was forced to take up additional expenditure towards installing ‘D’-‘D’ type towers on both sides of the power line crossing. PGCIL and Chhattisgarh State Power Transmission Company Limited rejected the Petitioner’s proposal to install ‘D’-‘B’ or ‘D’- C’ configurations and insisted that the Petitioner to install ‘D’-‘D’ type towers only.

(c) PGCIL and CSPTCL are Indian Government Instrumentalities as defined in the TSA. Their refusal to grant permission for ‘D’-‘B’ or ‘D’-‘C’ type towers

amounts to “a change in requirement for obtaining Consent, Clearance, Permit which was not required earlier” as per Article 12.1.1 of the TSA.

(d) Furthermore, even the CEA (on 27.7.2016 and 16.9.2016) directed that though there is no requirement under law to install ‘D’-‘D’ type towers for power line crossing, yet the Petitioner should install ‘D’-‘D’ type towers only for power line crossing, and that the differential cost will be compensated to the Petitioner later through a methodology that would be devised later. However, the methodology was never notified. As a result, even the CEA’s directive also amounts to Change in Law, and the Petitioner submits that it ought to be compensated for additional expenditure it undertook for installation of ‘D’-‘D’ type towers along with Carrying Cost.

(d) CEA in its opinion has stated that the requirement to use ‘D’-‘D’ type towers in power line crossings of 400 kV or above, were added in the Specific Technical Requirements in the RfP for the projects coming under TBCB route from the year 2017-18 onwards.

(e) RfP in the instant case did not have a mandatory specific requirement of ‘D’-‘D’ type tower for power line crossing, and the RfPs being issued by PFC after the CEA decision of 16.9.2016 specifically incorporate the requirement of ‘D’-‘D’ type tower for power line crossings.

(f) CEA, in its opinion, has also confirmed that the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 did not mandate the use of ‘D’-‘D’ type towers on both sides of the power lines crossings. Therefore, as on the cut of date i.e., 23.06.2015, there was no requirement under law to install ‘D’-‘D’ type towers at both sides of the power line crossing.

9. Power Grid Corporation of India Limited (PGCIL), in its affidavit dated 19.12.2022, has submitted as under:

(a) Transmission towers have been broadly classified as type A, B, C & D based on the angle of deviation of transmission line as 0-2⁰, 3-15⁰, 16-30⁰, 31-60⁰

respectively. The load/ force to be withstand by transmission towers is directly proportional to angle of deviation and hence order of load withstanding capacity of towers are D type, being the maximum, followed by C, B & A. Accordingly, foundation material (quantity)/ erection quantity (High Tension & Mild Steel, etc.) requirement which depends upon load withstanding capacity of transmission towers is maximum for D type towers and so on. Further, no guy wire/ back support is required during stringing work on D type towers due to its strength resulting into convenience and usually stringing work is carried out for a span falling between two D type towers. For this reason, any type of crossing by transmission lines is advisable using D type towers on both sides. In addition to above, towers are also provided necessary extensions/ increase in height (+9, +18, +25 in meters etc) as required to maintain necessary clearances with ground, power line, railway, etc. as prescribed in the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010. Tower with required extension is costlier as compared to tower with no extension in respective classification.

(b) With regard to power line crossing of 400 kV & above, towers with maximum load withstanding capacity i.e. D type is recommended and best suited to avoid interruption in bulk power transmitted through 400 kV and above transmission lines. Same requirement was discussed, standardized/ agreed during a meeting taken by Chief Engineer (CEI), CEA on 16.9.2016 wherein it was *inter- alia* decided that power line crossing for 400 kV and above should be done only with 'D-D' type of towers. Subsequent to these standardization, all 400 kV & above power line crossings are done only with 'D-D' type of towers. Further, apart from tower classification, technical study is also required to provide the required electric clearances between both power lines which is ensured by providing extensions to the tower at both ends, fixing the span between towers crossing the power line, etc.

(c) Prior to CEA direction during the meeting held on 16.9.2016, similar approach in power line crossings was adopted in PGCIL. However, in some exceptional cases, where constraints were faced during detailed survey with regard to necessary diversion angle, it was more convenient to cross existing power lines using D-A-D type towers configuration instead of D-D. Usually, in

these cases, an A type tower, depending on site conditions is inserted before the D type towers which was supposed to be installed immediately after it and accordingly swapping their respective locations. This A type tower is installed with necessary extension usually +25 meter to provide the required electric clearances between two lines and followed by D type tower with no extension or minor extension. Thus, the requisite clearance is ensured by A type tower with necessary extension (also less costly as compared to similar D type tower) and consequently benefit to beneficiaries due to cost optimization.

(d) However, above arrangement is only feasible in case A type tower is available immediately after D type tower to swap their respective places but in all other scenario, power line crossing has been done using D-D configuration with necessary extension. In addition, increasing no. of power lines, increasing voltage levels of new power lines to 765 kV necessitated the requirement of power lines crossing with D-D type configuration in most of the cases for stability of both power lines involved.

(e) With regard to while crossing Adani's Mundra-Mahendergarh HVDC line by PGCIL'S Bhuj-Banaskantha line, based on the power line crossing clearance provided by Adani Transmission (India) Ltd. to PGCIL vide letter dated 24.4.2017 and as agreed in CEA meeting dated on 27.7.2016 and subsequent meeting dated 16.9.2016, PGCIL crossed the Mundra-Mohindergarh HVDC line by its 765 kV PGCIL Bhuj - Banaskantha line with D-D type configuration. Accordingly, PGCIL has crossed Adani's Mundra-Mahendergarh HVDC line using D type tower on both side of the crossing instead of D' type tower on one side whereas 'B' type on the other side.

(f) With regard to TBCB project, namely, Vemagiri and Nagapattanam of PGCIL, whether 'D' type tower on one side and angle tower on the other side have been followed, most of the 400 kV and above power line crossings in these projects were crossed using D-D type tower configuration. However, some of the lines were implemented before power line crossings were standardized by CEA in its meeting held on 16.9.2016 and in those cases power lines crossings were implemented based on the technical feasibility at the site. Subsequent to

standardization after CEA meeting dated 16.9.2016, PGCIL has been using D-D type tower configuration while crossing 400 kV and above power lines.

10. In response to PGCIL submissions, the Petitioner vide its affidavit dated 21.12.2022, has submitted as under:

(a) APTEL in remand matter has only to elicit the opinion of the CEA, and not of PGCIL. It is a settled law that when a case is remanded from a superior court to subordinate court for rehearing, then the same matter is to be heard again on the materials already available on record and its scope cannot be enlarged by the introduction of further evidence and the court below to which the matter is remanded is bound to act within the scope of remand. Relying in the case of APTEL in the case of Damodar Valley Corporation vs. Central Electricity Regulatory Commission and Ors., [2010 SCC On Line APTEL 47], the Petitioner has submitted that the Commission cannot go beyond what the APTEL in its remand order had asked it to do i.e., to take the opinion of the CEA on the question of 'D'-'D' type towers being Change in Law as per the minutes of the relevant CEA meetings. Therefore, the impleadment of PGCIL is contrary to the order of the court which remanded the matter.

(b) Article 12 (Change in Law) of the TSA clause is a very wide amplitude and it, *inter alia*, includes occurrence of any of the events enumerated in Article 12 of the TSA, seven (7) days before the bid deadline which results in any additional expenditure, whether recurring or non-recurring, to the Petitioner.

(c) The term "Indian Government Instrumentality" has been defined in Article 1.1 of the TSA to mean Government of India, Government of any State within the territory of India or any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any State Government, or any political sub-division of Government of India or State Governments including any court or appropriate Commission or tribunal or any judicial or quasi-judicial body within the territory of India

(d) The test for whether an event is Change in Law has been described in Article 12 of the TSA. The test nowhere prescribes that whether an event is Change in Law or not should be certified by PGCIL, and if the Petitioner meets the test as per Article 12 of the TSA, it has to be compensated for Change in Law along with carrying cost. Therefore, seeking PGCIL's clarification on the issue at hand, is wholly contrary to the provisions of the TSA.

(e) From the paragraph 6(b) of the PGCIL's reply, it is clear that the PGCIL did not exclusively use 'D'-'D' type towers for its Vemagiri and Nagapattanam Projects and instead used the tower type that was feasible as per the site conditions, and it was only after 16th September 2016 (i.e. the minutes of CEA meeting, which the Petitioner is saying amounts to Change in Law), did the PGCIL use 'D'-'D' type towers exclusively for crossing 400 kV and above lines. Similarly, paragraph 3 of the PGCIL's reply makes it clear that only after 16th September 2016, PGCIL decided to use 'D'-'D' type towers for crossing 400 kV and above lines.

(f) PGCIL has made it clear that (i) as a matter of law, prior to 16th September 2016, there was no requirement for installing 'D'-'D' type towers for power line crossing for 400 kV and above lines, therefore the introduction of a mandatory requirement after 16th September 2016 amounts to Change in Law, and (ii) PGCIL only standardized its own practice to use 'D'-'D' type towers for power line crossing for 400 kV lines and above after 16th September 2016. Cut-off date for claiming Change in Law compensation as per the present TSA is 23rd June 2015 which is much before 16th September 2016. Therefore, the Petitioner is entitled to Change in Law relief qua installation of 'D'-'D' type tower.

(g) PGCIL in paragraph 6(a) of its reply has stated that based on Adani Transmission (India) Ltd.'s letter dated 24th April 2017 and as agreed in CEA's meetings dated 27th July 2016 and 16th September 2016, it had crossed the Mundra-Mahindergarh HDVC line by its 765 kV Bhuj-Banskantha line with 'D'-'D' type tower. PGCIL's letter seeking line crossing approvals qua Bhuj-Banskantha line dated 19th September 2015 sent to the Adani Power Ltd. and Adani Transmission (India) Ltd.'s letter dated 28th July 2016 sent to PGCIL. Therefore,

approval sought on date 19th September 2015 by PGCIL was for 'D'-'B' type tower and not for 'D'-'D' type tower.

(h) After CEA meeting dated 16th September 2016, PGCIL sent revised proposal dated 14th October 2016 which was in supersession of the earlier approval sought, and the revised proposal for crossing of Mundra-Mahindergarh HDVC line by PGCIL's 765 kV Bhuj-Banskantha line provided for with 'D'-'D' type tower on both sides of the crossing. This clearly shows that the PGCIL never intended to cross with 'D'-'D' type tower initially and only submitted revised proposals after CEA's meeting dated 16th September 2016. Subsequently, on 24th April 2017, Adani Transmission (India) Ltd. approved the line crossing approval in terms of PGCIL's revised proposal.

(i) Until the CEA had standardized the requirement to use 'D'-'D' type towers for power line crossing, PGCIL did not change its tower configuration and the same happened after the decision taken by the CEA in the meetings dated 27th July 2016 and 16th September 2016. Therefore, PGCIL's averment that it had sought power line crossing approval for its 765 kV Bhuj-Banskantha line using only 'D'-'D' type tower is misleading. From the aforesaid, it is clear that PGCIL had also envisaged crossing of Mundra-Mahindergarh HDVC line with its 765 kV Bhuj-Banskantha line using 'D'-'B' type tower and had changed its tower configuration based the decision taken by the CEA in the meetings dated 27th July 2016 and 16th September 2016.

(j) The difference between the Petitioner's case and that of PGCIL is that PGCIL, unlike the Petitioner, executes its transmission projects on a cost-plus model under Section 62 of the Act. Whereas, the Petitioner has implemented its projects through competitive bidding process and any escalation in cost of the project due to Change in Law will be governed by the provisions of the TSA.

Hearing dated 22.12.2022

11. During the course of hearing, learned senior for the Petitioner, learned counsels for the Respondent No.1, MSEDCL and Power Grid Corporation of India Limited

(PGCIL) made their detailed submissions. Vide Record of Proceedings for the hearing dated 22.12.2022, the Petitioner was directed to furnish the following details/clarifications:

(a) Whether the Petitioner at pre-bid stage while carrying out its own independent enquiry and/or survey as per the RfP and/or TSA had approached the concerned licensee(s) in relation to the necessary tower configurations for its power line crossing? If yes, the details thereof.

(b) The type tower configuration for power line crossing considered by the Petitioner at the time of submission of bid. Basis for opting/considering types tower configuration for power line crossing other than 'D'-'D' type as prevalent for power line crossing.

(c) Copy of line crossing approval granted by PGCIL and CSPTCL/CSPDCL for crossing of their lines.

(d) Whether the Petitioner approached CSPDCL with regard to the requirement of 'D'-'D' tower configuration for crossing of its 132 kV and 220 KV lines after the meeting of CEA dated 16.9.2016 wherein CEA specifically observed that crossing of 220 kV and 132 kV lines could be done with angular type tower as per requirement. The communications received from CSPTCL/CSPDCL before and after CEA meeting denying power line crossing with tower other than DD type towers.

(e) How many towers have been changed to D-D type tower, at what voltage levels and the method of calculation of D-D tower claim?

(f) Any other information relevant to the matter.

(g) Rate of Interest for carrying cost being claimed by the Petitioner.

(h) PGCIL and CSPTCL/CSPDCL to clarify the basis on which the Petitioner was asked to use 'D'-'D' type tower configuration for power line crossing within a week.

12. The Petitioner, vide its affidavit dated 17.1.2023 has submitted the information called for. No response has been filed by CSPTCL/CSPDCL. The Petitioner has mainly submitted as under:

(a) With regard to query (a), the Petitioner has submitted that any suspension (A type tower) or tension (B, C and D type tower) with standard extension could be used for power line crossing. It does not imply that specific D type tower at both ends shall be used for power line crossing. Further, it mentions that for crossing of the line where shutdown is difficult, suspension tower (A type tower) in combination with dead end tower (D type tower) shall be used. Further, crossing angle at 90 degrees can be maintained with any type of towers. The Petitioner was obligated to look at the TSA and the RfP alone and approaching the licensees regarding tower configuration would amount to introducing obligations that are alien to the terms of the contract. The Hon'ble Supreme Court in the case of Rajasthan State Industrial Development and Investment Corporation and Ors. vs. Diamond and Gem Development Corporation Ltd. and Ors., [(2013) 5 SCC 470] had held that the terms of the contract have to be construed strictly and have to be interpreted in such a way that its terms may not be varied and that it is not open for the courts to make a new contract. Since the RfP and the TSA did not impose the requirement of using 'D'-'D' type towers on both sides of the powerline crossings, the Petitioner was not obligated to use the same.

(b) With regard to query (b), any proposal for any power line crossing is made by taking into account the following safety Norms:

- a. Statutory/ RfP requirements;
- b. Mechanical strength of the tower; and
- c. Electrical clearances as per the guidelines of the Central Electricity Authority

The Petitioner has followed all the above parameters while proposing the powerline crossing to PGCIL and CSPTCL.

(c) With regard to query (c), the Petitioner had applied to PGCIL for power line crossing approvals with various types of towers which included 'B', 'C' and

'D' types of towers, *vide* its letters dated 3.2.2016 to PGCIL, and to CSPTCL *vide* letters dated 30.12.2015, 15.2.2016, 25.2.2016, 26.2.2016, 6.4.2016, 11.4.2016, as per the stipulated requirement. However, PGCIL and CSPTCL had rejected all the power line crossing proposals with 'C' and 'B' type towers *vide* their letters dated 15.3.2016, 4.5.2016, 8.9.2016, and 2.12.2016 and had insisted upon the use of 'D'-'D' type towers only. Thereafter, the Petitioner had submitted the revised proposal for crossing the transmission lines of PGCIL and CSPTCL with 'D'-'D' type towers upon which the approval for power line crossing was granted by PGCIL on 2.1.2017, CSPTCL on 24.8.2016, 12.9.2016, 2.12.2016 31.1.2017, and 15.2.2017.

(d) With regard to query (d), initially, the Petitioner had approached CSPTCL for crossing of its line with tension/suspension type towers based on the angles of deviation. However, CSPTCL rejected all the powerline crossings *vide* its letter dated 15.3.2016 and insisted on using 'D'-'D' type towers only for power line crossing. In a meeting held on 9.6.2016 for finalization of type of towers required for overhead powerline crossing, the following were recommended:

(i) Angle of crossing shall be 90° as far as possible. However, the same shall not be below 75° where a line is to cross over another line of the same voltage or lower voltage as per the CBIP Manual.

(ii) The distance between the tower from CSPTCL's lines on both sides should be more than the height of tower from the outer most conductor of the CSPTCL's lines.

(iii) The crossing line shall pass over the crossed line in the middle as far as possible to get the maximum clearance between power crossing lines at the point of crossing as per the CBIP Manual.

(iv) Both sides dead end towers or suspension towers with required extensions in combination with dead end towers should be used in overhead crossings.

(v) The minimum electrical clearance between the lowest power conductor of crossing line over the crossed line as per Regulation 69 of the CEA

regulations on Safety and Electricity Supply, 2010 given in the CBIP Manual Publication No. 323 clause 4.6 should be maintained.

The meetings were held with CEA on 27.7.2016 and 16.9.2016 and the Petitioner had approached PGCIL and CSPTCL around the same time for fresh powerline crossing approvals with 'D'-'D' towers. CSPTCL had rejected all the line crossing proposals of the Petitioner for all its lines regardless of them being below 400 kV and had insisted on the use of 'D'-'D' towers. Therefore, the Petitioner had to cross the 132 kV and 220 kV powerlines of CSPTCL with 'D'-'D' towers.

(e) With regard to Query (e), the Petitioner has submitted the details of towers that have been changed to 'D'-'D' type tower as follows:

Petitioner's line	Line to be crossed	From location			To location		
		Tower No.	Original Tower Type	Revised Tower Type	Tower No.	Original Tower Type	Revised Tower Type
765 kV S/C Sipat-Bilaspur Line	220 kV D/C Churi-Mopka (Bilaspur) line – (CSPTCL)	13B/0	SQD+9	SQD+9	14/0	SQC+9	SQD+9
	400 kV S/C Korba - Bhilai line Ckt-2 – (PGCIL)	19/0	SQC+6	SQD+6	19A/0	SQB+9	SQD+9
	400 kV S/C Korba - Bhilai (Raita) line - (CSPTCL)	19B/0	SQB+9	SQD+9	20/0	SQD+9	SQD+9
765 kV D/C Bilaspur-Rajnandgaon Line	132 KV D/C Chakharbhata – Kota - (CSPTCL)	12A/8	DHB+9	DHD+9	12A/9	DHB+9	DHD+9
	132 KV D/C Bhatapara - Mungeli - (CSPTCL)	22/4	DHB+9	DHD+9	22A/0	DHC+6	DHD+6
	220 KV D/C Bemetra-Mungeli - (CSPTCL)	25/0	DHD+18	DHD+18	26/0	DHB+18	DHD+18
	132 KV S/C Bemetra-Kawardha - (CSPTCL)	26A/0	DHB+9	DHD+9	27/0	DHD+6	DHD+6
	132 KV D/C Saja-Dhamda - (CSPTCL)	32/0	DHD+9	DHD+9	32/1	DHB+9	DHD+9

Petitioner's line	Line to be crossed	From location			To location		
		Tower No.	Original Tower Type	Revised Tower Type	Tower No.	Original Tower Type	Revised Tower Type
	400 KV S/C Khedamara-Seoni- (CSPTCL)	37/0	DHC+18	DHD+18	38/0	DHD+9	DHD+9

13. The Petitioner, in its written submission dated 17.1.2023, has mainly submitted as under:

I. The Change in Law event- imposition of a condition for power line crossing permission that the Petitioner should use “D-D” type tower configuration only for power line crossing

(a) As on the cut-off date, there was no requirement to install “D-D” type towers on both sides of the crossing.

(b) PGCIL and CSPTCL`s refusal amounts to Change in Law. As per bullet points three and four of the Article 12.1.1 of the TSA, “the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier” and “change in terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits” amounts to Change in Law in as much as the requests were made to PGCIL and CSPTCL for powerline crossings and they refused to grant approval for non “D-D” type towers and subsequently they only granted approval for powerline crossings after proposals with “D-D” type towers were made.

(c) While formulating its bid, the Petitioner was guided by the specific technical requirements of transmission lines set out in the Request for Proposal, Regulation 89 (1) (d) (ii) of the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 which specify that the design/loading criteria for tower design shall be as per relevant IS or IEC Standards. The Regulations do not specify the tower type to be used for power line crossings. The IS 802 only specifies the different kinds of suspension and tension towers. But the same are silent on use of a particular kind of tower configuration for powerline crossing. However, IS 5613 (Part-3) specifies the type of towers to be used for power line crossing.

(d) As per Clause 3.0 and Clause 11.3.2 of the Manual on Transmission Lines issued by Central Board of Irrigation and Power, any suspension (A type tower) or Tension (B, C and D type tower) with standard extension could be used for power line crossing. It does not imply that specific D type tower at both ends shall be used for power line crossing. Further, it mentions that for crossing of the line where shutdown is difficult, suspension tower (A type tower) in combination with dead end tower (D type tower) shall be used. Further, crossing angle at 90 degrees can be maintained with any type of towers. PGCIL manual only describes what a D type tower is and does not specify that only D type towers will be used for power line crossing. Further, PGCIL user manual provides for tower extension to be used to maintain minimum ground clearance while crossing power lines. Therefore, as on cut-off date, there was no requirement that Petitioner install “D-D” type towers for line crossings.

II. PGCIL and CSPTCL’s refusal to grant Permit/ consent/ clearance for line crossing amounts to Change in Law: In the various letters written by the Petitioner to PGCIL and CSPTCL, the Petitioner had proposed the crossing with either side of the tower to be “D” type of tower and other side to be either B or C type tower. However, PGCIL and CSPTCL rejected the proposal of the Petitioner to install “D-B” or “D-C” towers configuration and directed the Petitioner to use of “D-D” type towers only for power line crossing. The said action amounts to a Change in Law event as both PGCIL and CSPTCL are Government Instrumentality as per Article 1.1 of the TSA. CSPTCL and PGCIL had insisted on the use of “D-D” towers only when there was no such requirement in either in the Act, the Electricity Rules, or the Regulations framed therein. However, they had refused the power line crossing permission unless the Petitioner installed “D-D” type towers for power line crossing.

III. The CEA Minutes of 27.7.2016 and 16.9.2016 also amounts to Change in Law in as much as they took place after Cut-off Date and made use of “D-D” type towers mandatory for power line crossing:

(a) The use of “D-D” type tower for power line crossing further became mandatory only on 27.7.2016 and 16.9.2016. These dates are much after cut-off date, that is 23.6.2015. From a combined reading of the minutes of meeting held under the aegis of CEA, it becomes clear that (i) at the time of bidding, under the

Electricity Rules and Regulations, there was no mandate that power line crossings have to be done with “D” type towers on both the sides; (ii) PGCIL was itself using non “D-D” type towers for line crossings; and (iii) only on 16.9.2016 onwards, the CEA made the requirement for “D-D” type tower for line crossing mandatory, for which the Petitioner is entitled to Change in Law relief including carrying cost.

(b) The Petitioner had brought this issue to the notice of the CEA as to whether powerline crossing should be with “D-D” type tower only, which held a meeting on 27.7.2016 wherein the issue of power line crossing using “D-D” type towers was discussed. The Chief Engineer of the CEA in the meeting dated 27.7.2016 had stated that as per the Electricity Rules and regulations, there was no mandate that power line crossings have to be done with “D” type towers on both the sides. In the meeting dated 16.9.2016, the representative of the Petitioner had submitted that for safety consideration, on one side of the crossing “D” type tower could be used and on the other side any angle tower with adequate margin in deviation angle can be used. In the said meeting, the following was discussed and decided by the CEA:

(i) As per the industry standards there is no stipulation regarding use of “D-D” tower configuration for power line crossing.

(ii) As per PGCIL, crossing of its lines can only be allowed if the same is with “D-D” type tower, and PGCIL would also adhere to the same practice for all of its future transmission lines.

(iii) Power line crossing for 400 kV and above should be done only with “D-D” type of towers in order to ensure grid security and safety.

(iv) The standardized requirement of tower configuration should be included in the electrical safety regulation.

(v) A mechanism for recovery of differential cost due to subsequent change in tower type should be put in place, as the same is not mentioned in the TSA.

(c) In the said meeting dated 16.9.2016, Chief Engineer, CEA once again stated that there was no stipulation regarding the use of “D” type of tower for

power line crossing on both sides. In the said meeting, the Petitioner stated that the proposal of PGCIL to cross their power line only with “D-D” type of tower would put higher financial burden on the TSPs. The Chief Engineer, CEA while acknowledging that it was not mandatory for the TSPs to absorb costs, directed the TSPs to discuss within their organization that the differential cost could be absorb by the TSPs. The CEA also stated that it will discuss the methodology regarding differential cost of installation of “D-D” type towers with the Commission. However, neither was the requirement for using “D-D” type towers ever notified nor did the CEA ever approach this Commission with its proposal.

(d) The directive of the CEA itself amounts to Change in Law as it is a statutory authority under the Act (sections 70-73 of the Act). The CEA had itself acknowledged that there was no requirement under law for compulsory use of “D-D” tower while crossing, but that CEA was mandating it from 16.9.2016 onwards (which is much after the cut-off date). Even otherwise, PGCIL and CSPTCL’s conduct in refusing to give power line crossing permission itself amounts to Change in Law as they too are an Indian Government Instrumentality (as defined in the TSA).

IV. Imposition of a condition for power line crossing permission that the Petitioner use “D-D” type tower configuration only for power line crossing amounts to Change in Law:

(a) Imposition of new requirement by CEA (i.e., “D – D” type configuration tower on both ends of the crossing) falls independently under bullet points three and four of the Article 12.1.1 of the TSA. The TSA specifically provides for Change in Law event in case of imposition or change in terms and conditions for obtaining any permit. In the present case, PGCIL and CSPTCL and thereafter, the CEA have imposed the requirement of “D-D” type tower configuration for obtaining permit for power line crossing. Moreover, the specific tower configuration was imposed much after the cut-off date.

(b) The change in tower configuration requirement after the cut-off date is a significant departure from the law prevailing at the time of bid submission. Even otherwise, the CEA in its meeting dated 16.9.2016 had specifically stated that the methodology for recovery of the differential cost due to change in type of tower configuration would be discussed with this Commission. Therefore, the

Commission should take a considerate view on the incremental expenditure incurred by the Petitioner on account of change in tower configuration to “D-D” type and grant relief for the said Change in Law event in terms of Article 12.2.1 of the TSA.

(c) It is a settled principle that if any agreement states that a particular act relating to the furtherance of a contract has to be done in a particular manner then it has to be done in that manner and in no other manner. In support, the Petitioner has relied upon the judgment of APETL in the case of Talwandi Sabo Power Limited vs. Punjab State Power Corporation Limited and Ors, [2016 SCC Online APTEL]

V. The CEA’s stand on the issue of change in tower configuration to “D-D” type towers on both ends of line crossing: The CEA, in its opinion has submitted that the requirement to use “D-D” type towers in power line crossings of 400 kV or above, were added in the Specific Technical Requirements in the RfP for the projects coming under TBCB route from the year 2017-18 onwards. The RfP in the instant case did not have a mandatory specific requirement of “D-D” type tower for power line crossing, and the RfPs being issued by PFC after the CEA decision of 16.9.2016 specifically incorporate the requirement of “D-D” type tower for power line crossings. CEA in its opinion has also confirmed that the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 did not mandate the use of “D-D” type towers on both sides of the power lines crossings. Therefore, the Petitioner stands vindicated on the point that as on the cut-off date i.e., 23.6.2015, there was no requirement under law to install “D-D” type towers at both sides of the power line crossing.

14. PGCIL, in response to the Commission’s query regarding basis on which the Petitioner was asked to use ‘D’-‘D’ type tower configuration for power line crossing, in its written submissions dated 17.1.2203 has submitted as under:

(a) While crossing the existing power lines and afterwards, it is imperative to avoid tower collapse or minimise the probability of snapping of conductor in

newly constructed lines otherwise it would result in power interruption to the tune of thousands of MWs in two power lines causing serious threat to stability of grid. In view of the above, towers with maximum load withstanding capacity i.e., D type is recommended and best suited to avoid interruption in bulk power transmitted through 400 kV and above transmission lines similar to railway/ highway crossing. Further, "D" type towers on both sides while crossing 400 KV and above power lines also provides the safety, reliability, ease of O&M at a later stage and to facilitate the stringing /maintenance of the proposed power line crossing span independently. In addition, the Petitioner had submitted the 5 proposals for crossings of 5 number of PGCIL lines of 400 kV & above voltages, wherein 3 crossings were proposed with D-D type configuration and these crossing proposals were immediately cleared. However, 2 proposals were proposed with C type towers and PGCIL requested to revise the same with D-D type configuration as they were similar to other 3 crossings proposals.

(b) Considering abovementioned factors, PGCIL insisted for "D" type towers on both sides or D-A-D configuration while crossing its 400 kV power line in present case.

Analysis and Decision

15. We have considered the submissions of the parties and CEA and perused the documents available on record. At the outset, it is noted that the Petitioner has opposed the impleadment of PGCIL on the ground that PGCIL is neither a necessary nor a proper party to the present Petition. We do not find merit in the said contention of the Petitioner as it was PGCIL who has allegedly denied crossing to the Petitioner from configuration other than 'D'-'D' type. Pertinently, the Commission took the same view vide order dated 24.6.2019 in IA 51/2019 in Petition No 81/MP/2019. The relevant portion of the order is extracted below

5. We have considered the submissions of parties. It is observed that Respondent No.1, Maharashtra State Electricity Distribution Company Limited (MSEDCL), vide its reply dated 17.5.2019 to the Petition, has also requested to implead PGCIL as a Respondent to the Petition. In response, the Petitioner vide its rejoinder dated 15.6.2019 has stated

that there is no controversy as far as PGCIL's stand is concerned and the request of MSEDCL to implead PGCIL as a Respondent is liable to be rejected.

6. The Petitioner in the present Petition is seeking extension in the scheduled commercial operation on the ground that the direction of PGCIL to re-route the LILO of one Circuit of 765 kV D/C Aurangabad-Padghe Transmission Line at Shikarpur GIS and to resubmit the proposal for consideration is a Force Majeure event. According to the Petitioner, it has been affected to the direction of PGCIL to re-route the line and to complete the balance work at Pune end-termination. Considering the submissions of the Applicant, the Petitioner and the Respondent No. 1, MSEDCL, we are of the view that the Applicant is a proper and necessary party to the present Petition to adjudicate the issues involved in the present Petition.

7. Accordingly, we allow the IA and PGCIL shall be arrayed as a Respondent to the Petition. The Petitioner is directed to serve copy of the Petition on PGCIL, if not already served, by 26.6.2019 who shall file the reply, by 15.7.2019 and the Petitioner to file rejoinder, by 29.7.2019."

Therefore, in our view, PGCIL is a proper and necessary party to the present Petition to adjudicate the issues involved in the present Petition.

16. The Petitioner has further contended that the remand by the APTEL was only to elicit the opinion of the CEA, and not PGCIL. The Petitioner has relied on the judgment of APTEL in the case of Damodar Valley Corporation vs Central Electricity Regulatory Commission and Ors., [2010 SCC ONLINE APTEL 47] to argue that when a case is remanded from a superior court to subordinate court for rehearing, then the same matter is to be heard again on the material already available on record and its scope cannot be enlarged by the introduction of further evidence and the court below to which the matter is remanded is bound to act within the scope of remand.

17. The APTEL vide its judgment dated 27.9.2022 in Appeal No 238 of 2021 has remanded the matter back to the Commission observing as under:

4. After some hearing, it is agreed on both sides that the matter would require views of Central Electricity Authority (CEA) to be taken on the issue of change in configuration of towers to 'D' – 'D' type on both sides of the crossing, as was insisted upon by Power Grid Corporation of India Limited (PGCIL) and Chhattisgarh State Power Transmission Company Limited (CSPTCL), the appellant having been statedly constrained to incur additional expenditure on account only of such insistence.

5. *In the given facts and circumstances, we remit the issue to the above extent to the CERC for reconsideration, after seeking opinion of CEA. Needless to add, the Commission shall be obliged to hear the parties before it passes a fresh order on this aspect, not feeling influenced or bound by the view taken by the order under appeal.*

18. We observe that APTEL remitted the issue for reconsideration after seeking opinion of CEA and that Commission was obliged to hear the 'parties' before it passes fresh order on this aspect. Accordingly, we do not agree with petitioner's argument that only "CEA" could have been allowed to file its submission and no other party could file its submissions. It is apparent from the remand order that alleged objections raised by PGCIL are juxtaposed with the said opinion of the CEA and could not have been fairly answered as envisaged in the order without taking comments of PGCIL.

Change in configuration of type of towers to 'D'-'D' at both sides of the power line crossing

19. The Petitioner had claimed change in configuration of towers to 'D'-'D' type towers for power line crossings as a Change in Law event. The Commission after considering the submissions of the parties, vide order dated 16.6.2021 rejected the claims of the Petitioner towards installation of "D" type tower on both the side of the power line crossing on the ground that decision of CEA in the meetings cannot be classified as enactment of "Law" under Article 12.1.1. The Commission observed that outcome of the meeting was only a consensus amongst the various stakeholders for resolution of the dispute. The relevant portion of the said order dated 16.6.2021 in the instant Petition is extracted as under:

"76. We have considered the submissions made by the parties. On being denied approval for power line crossing without implementation of "D"- "D" configuration by CSPTCL and PGCIL, the Petitioner approached CEA for resolution of the dispute. CEA held two meetings on the issue on 27.7.2016 and 16.9.2016. The Petitioner has placed minutes of both the meetings on record.

77. Perusal of the minutes of the meeting held on 27.7.2016 reveals that Chief Engineer (EI), CEA had informed that as per the Electricity Rules, there is no mandate that power line crossings have to be done with "D" towers on both the sides. However,

there has to be sufficient margin in the crossing towers depending on the angle of crossing. The Petitioner had informed CEA that PGCIL is insisting on D-D configuration when PGCIL itself has proposed "D" type tower on one side whereas "B" type on other side in its proposal to cross Mundra-Mahindragarh HVDC transmission line of Adani Transmission Ltd. in case of Bhuj- Banaskantha transmission line of PGCIL. It was further informed that even in its TBCB projects, namely, Vemagiri and Nagapattanam, PGCIL has allowed "D" type tower on one side and any angle tower on the other side depending upon the crossing angle. During the meeting, PGCIL categorically admitted that „their management have now taken a view that any power line crossing has to be done with "D" type tower on both sides to avoid any kind of disruption of power due to mis-happening during stringing over their line and subsequently to minimize the probability of snapping of their line due to tower collapse of the other utility“

78. The second meeting on the said issue was held in CEA on 16.9.2016. During the meeting Chief Engineer, PSETD, CEA reiterated that as per IS there is no stipulation regarding the use of D type tower for power line crossing. Further, Chief Engineer (PSPM) stated that there is a need to emphasize more on safety while dealing with the power line crossing involving transmission lines of 400 kV and above. As per the minutes, Chief Engineer, PSETD emphasized as under:

“CE, PSETD insisted that the 400 KV as well as 765 KV lines carries huge quantum of power and in the event of their failure due to collapse of tower would lead to huge financial loss due to failure of power transmission and long outage. The same if quantified in terms of monetary loss, would be very high compared to the differential cost of „D-D“ type of tower and angular tower or tower with other combination. Further, grid security due to failure HVAC system is also another dimension to it. Considering this Railways are strictly following the practice of line crossing with only "D-D" towers. As such he advised the TSPs to seriously think over the issue again.”

80.....After going through the minutes of the meetings, we are of considered opinion that decision of CEA in the meetings cannot be classified as enactment of "Law" under Article 12.1.1. It is evident that the outcome of the meeting was only a consensus amongst the various stakeholders for resolution of the dispute. The apprehension regarding "Change in Law" claim was also shared by CEA during the meeting and, for the same reason, CEA had requested licensees to discuss the issue with their organizations to see if the differential cost can be absorbed by the TSPs. Therefore, the aforesaid decision of CEA upholding the requirement of only "D"- "D" type of tower for power line crossing of 400 kV cannot be considered as Change in Law under Article 12 of the TSA”

82. As per Article 5.1.1 of the TSA, the Petitioner is responsible for designing, constructing, erecting, completing and commissioning each element of the Project by the scheduled COD, at its own cost and expense. Further, in accordance with Article 5.1.3 of the TSA, the Petitioner is responsible to obtain all consents, clearances and permits including approval for crossings in order to carry out its obligations under the TSA in general and Article 5.1.1 in particular. It is the responsibility of the Petitioner under the TSA to obtain consents/ clearances by fulfilling the desired criteria. Accordingly, we opine that imposition of the requirement of installation of "D" type towers on both the side of power line crossing for obtaining clearance from PGCIL and CSPTCL is not admissible under Change in Law.

83. In light of the above, the Petitioner is not entitled to increase in transmission charges on account of additional expenditure incurred towards installation of "D" type tower on both the side of the power line crossing.”

20. Subsequent to APTEL judgment dated 27.9.2022 in Appeal No 238 of 2021, whereby APTEL remanded the Order dated 16.6.2021 in the instant Petition to the Commission, CEA submitted its opinion vide letter dated 12.12.2022 as follows:

(a) Regulation 89.2. (a) of the Central Electricity Authority (technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 provides that crossing of a transmission line with roads or a railway or a river or a power line or a telecommunication line shall be finalized as per applicable rules and regulations specified by the concerned authorities. As per the above provision, D-D type towers for crossing for transmission lines is not mandated.

(b) The Indian Standard IS 5613 (Part3/Sec 2): Code of Practice for Design, Installation and Maintenance of Overhead Power Lines which is applicable for 400 kV voltage level allows use of both suspension and tension type towers for crossing of transmission lines. Clause 6.5.1 (h) of the IS code provides that where a line to cross over another line of the same voltage or lower voltage, suspension/tension tower with suitable extensions shall be used. At present, the IS code for 765k V line is not available and is under preparation.

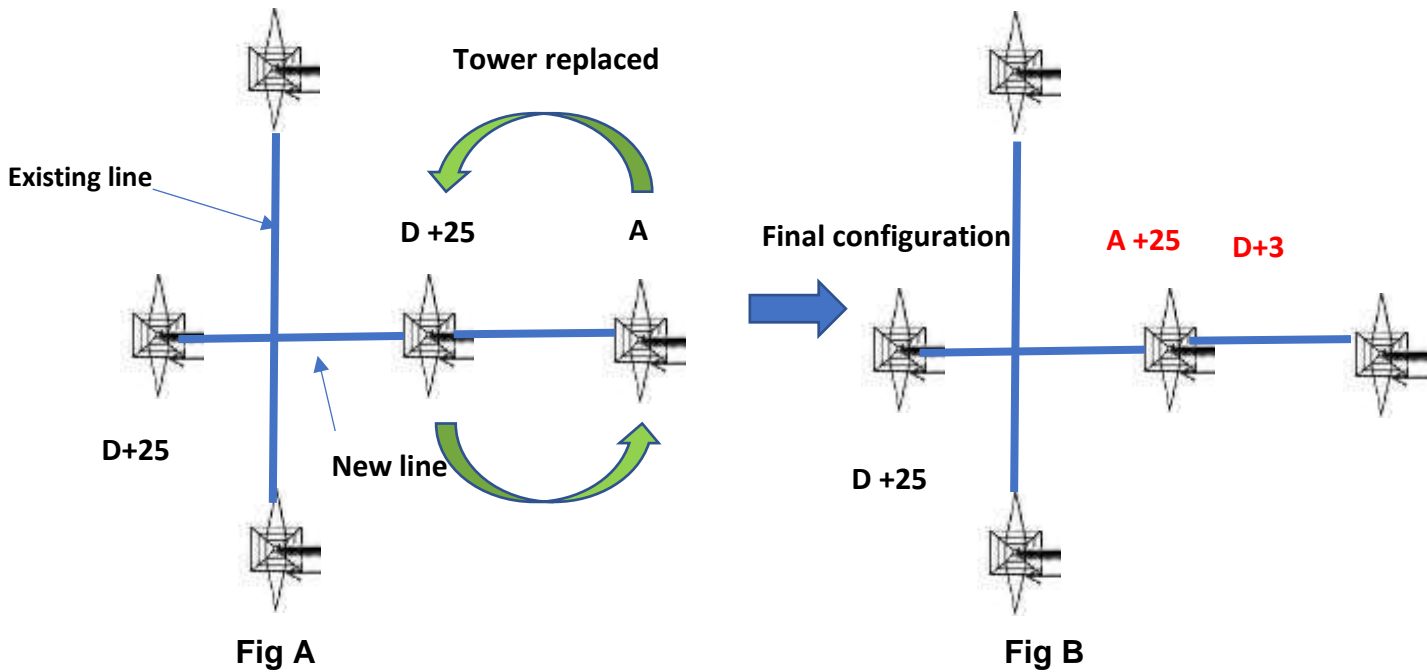
(c) The above provisions are applicable at present for construction of the transmission lines and the same were applicable on the cut of date as per the TSA regarding the subject matter i.e 23.6.2015.

(c) Considering the issue of safety involved in the power line crossing following provisions, related to 400 kV or above voltage level lines, were added in the specific technical requirements in the RfP document for the

projects coming under the TBCB route from the year 2017-18 onwards which is extracted as under:

“For power line crossing of 400 or above voltage level (if crossed over the existing line) large angle & dead-end towers (i.e. D/DD/QD) shall be used on either side of power line crossing.”

21. PGCIL has submitted that since the load/ force to be withstood by transmission towers is directly proportional to angle of deviation, order of load withstanding capacity of towers is D type, being the maximum, followed by C, B & A. Accordingly, Foundation material (quantity)/ Erection quantity (High Tension & Mild Steel, etc.) requirement which depends upon load withstanding capacity of transmission towers is maximum for D type towers and so on. Further, no guy wire/ back support is required during stringing work on D type towers due to its strength resulting into convenience and usually stringing work is carried out for a span falling between two D type towers. For this reason, any type of crossing by transmission lines is advisable using D type towers on both sides. With regard to power line crossing of 400 kV & above, towers with maximum load withstanding capacity i.e., D type is recommended and best suited to avoid interruption in bulk power transmitted through 400 kV and above transmission lines. Prior to direction of CEA during the meeting held on 16.9.2016, similar approach in power line crossing was adopted in PGCIL. However, in some exceptional cases, where constraints were faced during detailed survey with regard to necessary diversion angle, it was more convenient to cross existing power lines using D-A-D type towers configuration instead of D-D. A schematic of power line crossing with above option is demonstrated below:



22. We have perused submission of the Petitioner, the Respondents, opinion of CEA and various Standards and proceed to analyse the issue in this light. The standards provide as follows:

(a) IS 802- Use of Structural Steel in Overhead Transmission Line Towers-- Code of Practice)

Type of Tower	Angle of deviation	Type of Tower *
Suspension tower	Tangent towers (0°) with suspension string	A Type tower
	Intermediate towers (0° to 2°) with suspension string	
	Light angle towers (0° to 5°) with suspension string	
Tension Tower	Small angle towers (0° to 15°) with tension string	B Type tower
	Medium angle towers (0° to 30°) or (15° to 30°) with tension string	C Type Tower
	Large angle towers (30° to 60°) with tension string	D Type Tower
	Dead-end towers with tension string	
	Large angle and dead-end towers with tension string	

*nomenclature as submitted by Petitioner

As per above, IS-802 provides for various types of towers that can be used for transmission lines.

(b) IS 5613 (Part-3) specifies as follows:

“6.5.1...

h) Power line crossings

Where a line is to cross over another line of the same voltage or lower voltage, suspension/tension tower with suitable extensions shall be used”

As per above, suspension/tension towers are to be used while crossing other line.

(c) The CBIP manual, provides at Clause No. 11.3.2, page No. 335 as follows:

“STATUTORY REGULATION FOR CROSSING OF ROADS, POWER LINES, TELECOMMUNICATION LINES, RAILWAY TRACKS, ETC.

11.3.2 Power Line Crossing

The angle of crossing shall be 90° as far as possible for Power Line Crossing. However, the same shall not be below 75° where a line is to cross over another line of the same voltage or lower voltage. Suspension/tension towers with standard extensions shall be used. Wherever the line to be constructed is crossing another important line for which shutdown is difficult, suspension towers with required extensions in combination with dead end towers shall be used. The Crossing Line shall pass over the Crossed Line in the middle as far as possible to get the max clearance between power crossing lines at the point of crossing.”

As per above, where line is to cross any other line of same or lower voltage suspension/tension tower are required to be used, however while crossing an important line where shutdown is difficult, suspension tower in combination with dead end tower ('D' type) is required to be used.

(d) Indian Electricity Rules, 1956 provides as follows:

“(2) When it is intended to erect a telecommunication line or an overhead line which will cross or be in proximity to an overhead line or a telecommunication line, as the case may be, the person proposing to erect such line shall give one month’s notice of his intention so to do along with the relevant details of protection and drawings to the owner of the existing line.

(3) Where an overhead line crosses or is in proximity to another overhead line, guarding arrangements shall be provided so as to guard against the possibility of their coming into contact with each other”

As per above provision, it is necessary that guarding arrangements need to be provided so as to guard against possibility of two lines coming into contact of each other

23. CSPTCL vide letter dated 4.5.2016 stated as follows on the proposal of the Petitioner to use ‘B’ /‘C’ type tower to cross CSPTCL line:

“A proposal for overhead crossing of existing 220 k V Churri-Mopka line of CSPTCL by under construction 765 kV 3rd S/C Sipat-Bilaspur Transmission line of M/s Sipat Transmission Limited has been submitted for approval, it is understood that the 765 k V 3rd S/C Sipat-Bilaspur transmission line of M/s Sipat Transmission Limited is proposed to cross the existing 220 kV Churri-Mopka line of CSPTCL across location AP 13B/0 and AP 14/0 by erecting (SQD+9M) and (SQC+9M) type towers respectively on crossing locations.

In connection with the proposal of overhead crossing as above, it is to covey that the tower proposed at location AP 14/0 SQC+9M (30Degree) type may not be above to restrict effect of severe machinal disturbances erupted on section of proposed line prior to location AP 14/0 from falling on CSPTCL`s existing 220 kV Churri-Mopka line.

In view of the above observation, the proposal of crossing is returned herewith in original for resubmission duly corrected.”

As per above, CSPTCL observed that proposed tower of ‘C’ type may not be able to restrict effect of severe mechanical disturbances erupting on the section.

24. After pursuing abovesaid quoted CEA opinion, submissions of PGCIL & CSPTCL and standards we conclude as follows:

(a) CEA in its meeting held on 16.9.2016 emphasized the safety and security concerns while erecting a transmission line of 400 kV or 765 kV stating that 400 KV as well as 765 kV lines carries huge quantum of power and in the event of their failure due to collapse of tower would lead to huge financial loss due to failure of power transmission and long outage, and the grid security due to failure HVAC system is also to be ensured. CEA also noted that Railways are strictly following the practice of line crossing with only “D-D” towers.

(b) PGCIL in its submissions confirmed the requirement of D-D towers while crossing its line to petitioner citing security concerns.

(c) CSPTCL in its letter dated 4.5.2016 also cited security concerns while rejecting 'B' and 'C' type proposal of the Petitioner to cross its 132kV / 220 kV lines.

(d) PGCIL has submitted that where D-D is not possible 'D-A-D' is used based on feasibility. The Petitioner has not submitted anything on whether it proposed to use suspension 'B' or 'C' type tower along with 'D' type, rather we observe that the Petitioner had proposed to use 'A' type tower after 'C' type while crossing 220 kV Churi-Bilaspur line of CSPTCL, which CSPTCL did not allow.

(e) CSPTCL did not allow the Petitioner to cross its 132 kV line or 220 kV line with any tower (the Petitioner proposed 'B' and 'C' type) other than 'D' type. In fact, even after CEA suggestions to the effect that in voltages lower than 400 kV, towers other than 'D' type may be used, the Petitioner did not approach CSPTCL with CEA minutes to ensure that CSPTCL allows it to use 'B' or 'C' type as the Petitioner had planned while bidding.

(e) All the standards, be IS or CBIP manual or CEA standards or the Indian Electricity Rules, 1956 keep safety and reliability of transmission lines as the main criterion while designing any transmission line. 'D' type tower configuration was in place much prior to CEA meeting on 16.9.2016 and was being actively used for power line crossing as stated by PGCIL in its submissions.

25. The Petitioner under competitive bidding claims to have considered lighter towers 'B' or 'C' type considering its economy. However, whenever any transmission licensee is supposed to cross an existing line, it needs to take permission of existing line owner as per the safety requirements of such owner. On a specific query of Commission vide ROP for hearing dated 22.12.2022 as to whether the Petitioner at pre-bid stage while carrying out its own independent enquiry and/or survey as per the RfP and/or TSA had approached the concerned licensee(s) in relation to the necessary tower configurations for its power line crossing. In this regard petitioner has

not replied whether it approached the licensees to confirm its assumption of 'B' / 'C' type towers to cross existing transmission lines of PGCIL or CSPTCL. The Petitioner has not submitted any details regarding whether it had proposed 'D' type tower immediately after 'B' type or not, as suggested by PGCIL that he could have used 'D-A-D' combination if the Petitioner did not wish to use 'D-D'. The CBIP manual clearly provides that important line must be crossed using suspension in combination with dead end towers ('D' type) as PGCIL has also suggested. However, the Petitioner has not shown anything on record to prove that where it had placed dead end tower pursuant to crossing an important 400 kV line.

26. In the instant case, it was the Petitioner's assumption while bidding that 'B' and 'C' type towers would be allowed by transmission licensees whose line it is going to cross. Such assumption was clearly without it having inquired as to conditions and procedures for obtaining the line-crossing permission with concerned transmission licensees. Admittedly, it is not the case wherein the PGCIL & CSPTCL altered their stand with regard to the requirement of D-D type towers for line crossing pre & post bidding. In our view, PGCIL as well as CSPTCL were well within their rights to ensure that their existing lines are safe and do not become vulnerable due to crossing of a new line of the Petitioner. Whatever PGCIL or CSPTCL asked the Petitioner was in consideration of safety requirement of the transmission lines and very much as per IS standards as well as various standards as quoted in the instant order and was not in departure from these standards. Hence, the requirement of D-D type towers for transmission line crossing by PGCIL & CSPTCL, at best, merely challenges the assumption of the Petitioner at the time of bidding which as we have already noted above was without any basis or inputs from the concerned transmission licensees whose line the Petitioner was required to cross. The meeting in CEA was to facilitate

a discussion and did not change any law, since the requirement imposed on the Petitioner was very much existing even before the CEA meeting, which the Petitioner complied in case of PGCIL after discussion in CEA but complied in case of CSPTCL without any discussion in CEA.

27. In light of the above, we do not find any need to interfere with our earlier decision in order dated 16.6.2021 in Petition No 453/MP/2019. Accordingly, the claim of Change in Law on the above ground is devoid of merits.

Carrying Cost

28. As regards carrying cost, the Commission vide its order dated 16.6.2021 had denied carrying cost to the Petitioner by relying on the judgement dated 13.4.2018 in Appeal No. 210 of 2017. Relevant portion of the order dated 16.6.2021 is extracted as under:

“92. We have considered the submissions of the Petitioner and the Respondents. The issue of carrying cost has been dealt with by APTEL vide judgement dated 13.4.2018 in Appeal No. 210 of 2017 in Adani Power Limited v. Central Electricity Regulatory Commission and Ors, wherein it was held that since Gujarat Bid-01 PPA had no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. The relevant extract of the judgment dated 13.4.2018 reads as under:

“ISSUE NO.3: DENIAL OF CARRYING COST x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of „restitution“ i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgement of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA.”

93. The judgment of APTEL dated 13.4.2018 in Appeal No. 210 of 2017 in Adani Power Limited v. Central Electricity Regulatory Commission and Ors., was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No.5865 of 2018 with Civil Appeal No. 6190 of 2018

(Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.) held as under:

“10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.”

16....There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.”

94. In light of the above judgments of APTEL and the Hon`ble Supreme Court, in the absence of the restitution provisions in the TSA, the claim of the Petitioner regarding carrying cost is not admissible.”

29. The APTEL vide its judgment dated 27.9.2022 has remanded the issue of carrying cost observing that the law has developed over the period on this issue by various decisions of the courts including by judgment dated 15.9.2022 in Appeal No 256 of 2019 & batch in *Parampujya Solar Energy Pvt. Ltd & anr v. Central Electricity Regulatory Commission & ors* (hereinafter referred to as 'Parampujya judgment').

30. The Petitioner, vide its written submission, has made the following submissions on the issue of carrying cost:

(a) The present issue is covered by the Parampujya judgment dated 15.9.2022 wherein the APTEL (despite there being no express clause in the PPA regarding carrying cost) has granted the same to the Solar Power Developers.

(b) Hon'ble Supreme Court in catena of decisions has held that the "power to regulate" is a very wide power, enabling the authorities to take any such measures in order to achieve the objective of the statute. [*K. Ramanathan vs. State of Tamil Nadu and Anr.*, (1985) 2 SCC 116; *U.P. Co-operative Cane Unions Federations vs. West U.P. Sugar Mills Association and Ors.*, (2004) 5 SCC 430]

(c) The Hon'ble Supreme Court in the case of Energy Watchdog in the context of section 63 of the Act held that the Electricity Commission must exercise its functions in accordance with law and guidelines and in situations where no such guidelines exist, it may avail of its 'general regulatory powers' under section 79(1)(b) of the Act.

(d) The Change in Law clauses in both Parampujya Solar (Supra) case as well as the present case are very wide and open ended. Further, there is no bar on granting carrying cost under the TSA. Therefore, the Commission should grant carrying cost to the Petitioner while exercising its Regulatory Powers under Section 79(1)(b) of the Act.

(e) The judgment passed by the Hon'ble Supreme Court in the case of Uttar Haryana Bijli Vitran Nigam Limited vs. Adani Power Limited & Ors., [(2019) 5 SCC 325] would not apply to the facts of the present case.

(f) Article 12.2 of the TSA uses the word "Relief". It provides for Change in Law relief both during construction and operations period. Wherever an agreement uses the word "Relief" it is of widest amplitude. Reliance is placed on meaning of expressions 'Relief' as explained in P Ramanatha Aiyar's Advanced Law Lexicon.

(g) The hardship will never be eased out until the carrying cost is granted. It is quintessential that carrying cost be granted as part of "Relief" as held by the APTEL in Parampujya judgment. Just like the Change in Law clause in Parampujya case, Change in Law clause in the present case is also very broad.

(h) Carrying cost is the compensation for time value of the money and any compensation for Change in Law is incomplete if it does not come with carrying cost that is inherent to the very provision. The cornerstone of Change in Law relief is restitution i.e., relief be granted in a manner so as to place an affected party in the same financial position as if a Change in Law had not occurred. Restitution is therefore inherent to compensation.

(i) Section 70 of the Indian Contract Act, 1872 ("Contract Act") states that if a person enjoys the benefit of a non-gratuitous act, the said person has to compensate the person performing the said non-gratuitous act. The Petitioner is a commercial entity and was not performing any gratuitous acts for the Respondents, therefore, it has to be compensated for the loss of time value of money in the form of carrying cost i.e. carrying cost from the date on which the Petitioner incurred the financial liability till the date on which the Petitioner raises the Supplementary Bill.

(j) The Petitioner has incurred an additional cost in terms of the interest which has been paid for borrowing of funds for payment of incremental tax and expenditure on other Change in Law events. The same costs have formed a part of the Project cost as Interest During Construction ("IDC") before the COD and the Petitioner has continued to pay the same which have not been reimbursed to it. Therefore, the Petitioner is entitled to be compensated for the same by way of

carrying cost. The Petitioner had to infuse additional capital for construction and timely completion of the Project in order to offset the adverse financial impact of the Change in Law events. For this purpose, the Petitioner had to borrow from its lenders and pay interest on such additional capital. Therefore, such additional interest paid by the Petitioner shall also form part of the additional expenditure incurred by the Petitioner due to Change in Law. Accordingly, the Petitioner is entitled to carrying cost/ interest on all additional amounts incurred/paid till date on account of Change in Law.

(k) The Hon'ble Supreme Court in the case of R.C. Cooper vs. Union of India, (1970) 1 SCC 248, had noted in Paragraph 83 that as per the dictionary meaning, "compensation" means anything given to make things equal in value: anything given as an equivalent, to make amends for loss or damage. The Hon'ble Supreme Court in in Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. and Anr., [(2010) 10 SCC 341] held that the compensation is a comprehensive term and is aimed at restoring a party to the same position as if no injury was caused to it. In this regard, reliance is also placed on judgment of the Hon'ble Supreme Court in the case of South Eastern Coalfields Ltd. vs. State of M.P. and Ors, [(2003) 8 SCC 648].

(l) Hon'ble Supreme Court in the case of Kavita Trehan and Anr. vs. Balsara Hygiene Products Ltd, [(1994) 5 SCC 380] had stated that the jurisdiction to make restitution is inherent in every court. APTEL in the case of SLS Power Limited vs. Andhra Pradesh Electricity Regulatory Commission and Ors, Appeal Nos. 160, 166, 168, 172, 173 of 2011 and 9,18,26,29 and 38 of 2012 while holding that the carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time.

(m) APTEL in the case of Maharashtra State Electricity Distribution Co. Ltd. vs. Maharashtra Electricity Regulatory Commission and Ors, Appeal No. 15 of 2007 has held that the payment of interest is a natural corollary of any delayed payment. Further, APTEL in the case of PTC India Ltd. vs. Gujarat Electricity Regulatory Commission and Anr, Appeal No. 47 and 62 of 2013 despite being no express provision in PPA, granted carrying cost in the form of interest on the principles of equity by relying upon its previous judgments.

(n) Reliance has also been placed on the judgments of Hon'ble Supreme Court of India in the case of Indian Council for Enviro-Legal Action vs. Union of India (UOI) and Ors. [(2011) 8 SCC 161], Alok Shanker Pandey vs. Union of India (UOI) and Ors, [(2007) 3 SCC 545] and Central Bank of India vs. Ravindra and Ors, [(2002) 1 SCC 367].

(o) APTEL vide its judgment dated 22.03.2022 in the case of Rattan India Power Limited vs. Maharashtra Electricity Regulatory Commission and Anr., Appeal Nos. 118 of 2021 and 40 of 2022 has awarded carrying cost at the rate of Late Payment Surcharge. Thereafter, the Petitioner is also entitled to carrying cost at the rate of LPS as has been held by the APTEL in Rattan India (Supra) till it is fully compensated.

(p) Hon'ble Supreme Court in its judgment in the case of Uttar Haryana Bijli Vitran Nigam and Anr. vs. Adani Power (Mundra) Limited, [2022 SCC OnLine SC 1068] has recognised the principle that if the banks have charged interest on monthly basis for giving loans, then any restitution will be incomplete, if party is not fully compensated for the interest paid by it to banks on compounding basis.

(q) In light of the above, the Petitioner shall be entitled for carrying cost/ interest on compounding basis from the time when such Change in Law events adversely affected the Petitioner. The Commission has the power to determine the compensation on account of a Change in Law event and restore the Petitioner to the same economic position as if the Change in Law event had not occurred.

31. We have considered the submissions made by the Petitioner and Respondents with regard to carrying cost. The Commission had denied carrying cost in the impugned order relying on judgement dated 13.4.2018 in Appeal No. 210 of 2017 in *Adani Power Limited v. Central Electricity Regulatory Commission and Ors*, wherein it was held that since Gujarat Bid-01 PPA had no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. However, the APTEL has differentiated its earlier judgment dated 13.4.2018 in the matter of *Adani Power Limited v. CERC & Ors.* (Appeal No. 210 of 2017) in the case of *Parampujya* judgment to allow carrying cost in the following manner:

“51. The PPAs contain identical terms on the subject of “Relief for Change in Law” in the following form:

“12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.

12.2.2 The decisions of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both parties.”

[Emphasis supplied]

56. *On the issue of carrying cost, reference was made, inter alia, to two previous decisions of this tribunal. They include judgment dated 13.04.2018 in the matter of Adani Power Limited v. CERC & Ors. (Appeal no. 210 of 2017) and judgment dated 14.08.2018 in the matter of M/s GMR Warora Limited v. CERC & Ors. (Appeal no. 111 of 2017).*

.....
61. *The contesting respondents, primarily the beneficiaries (distribution licensees) and the intermediary (SECI), have relied upon the above quoted judgments of this tribunal in Adani Power Ltd (supra) and GMR Warora Ltd (supra) arguing that the PPAs*

in the matters at hand are similar to the contracts which were subject matter of the said earlier decisions, they being modeled on Gujarat Bid-01 PPA which, unlike Gujarat Bid-02 PPA, does not contain the restitution clause, the submission being that in absence of such restitution clause, the claim for carrying cost arising out of change in law compensation plea is not admissible, the rights and obligations of the parties, as observed in Adani Power Ltd(supra), required “to be seen in terms of the agreed PPA”, the relief of carrying cost being allowable only, as said in GMR Warora Ltd (supra), “if there is a provision in the PPA”.

62. The contesting respondents rely on the ruling of Hon’ble Supreme Court reported as *Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) v. Adani Power Limited and Ors. (2019) 5 SCC 325*, it being a judgment arising out of civil appeal challenging the judgment dated 13.04.2018 in *Adani Power Ltd (supra)* referring particularly to the following observations:

“10. Article 13.2 is an in-built restitutionary principle which compensates the party affected by such change in law and which must restore, through monthly tariff payments, the affected party to the same economic position as if such change in law has not occurred. This would mean that by this clause a fiction is created, and the party has to be put in the same economic position as if such change in law has not occurred, i.e., the party must be given the benefit of restitution as understood in civil law...

....

13. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.”

[Emphasis supplied]

63. The relevant clauses of the PPAs in the matters at hand on the subject of change in law and relief in its context have already been taken note of. The model of PPA in Gujarat Bid-01 process, which was subject matter of afore quoted observations in the previous decisions, contains Article 13 on the subject of change in law which, to the extent relevant, may be extracted as under:

“Gujarat Bid-01 PPA – GUVNL (Thermal)

13. Articles 13 change in law

.....”

[Emphasis supplied]

64. In contrast, the model of Haryana PPA, which was subject matter of dispute in Adani Power Ltd (supra) while providing for change in law scenario, by Article 13, provided as under (quoted to the extent relevant):

“Haryana PPA – HBVNL (Thermal)

13.1 Definitions

In this Article 13, the following terms shall have the following meanings

13.1.1 “Change in Law means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline:...

...

13.2 Application and Principles for Computing impact of Change in Law

While determining the consequence of change in law under this Article 13, the parties shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law is to restore through Monthly Tariff Payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

...

13.3 Notification of Change in Law...

13.4 Tariff Adjustment Payment on account of Change in Law

13.4.1 Subject to Article 13.2, the adjustment in Monthly Tariff Payment shall be effective from: (i) the date adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or (ii) the date of order/judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through supplementary bill as mentioned in Article 11.8...”

65. It is the argument of the contesting respondents that the claim for compensation under the PPAs at hand is contingent upon the decision in the first instance of the Central Commission on the admissibility and once such claim has crystallized upon approval of the claim of change in law, compensation from the date of such approval only can be granted, there being no provision for carrying cost being claimed for the anterior period. Referring to the expression “provide relief”, as appearing in Article 12.2.2 of the PPAs, the respondents submit that the same cannot be interpreted to mean restitution of the kind claimed in the present appeals.

66. To put it simply, the controversy at hand requires to be addressed on the basis of interpretation to be put on the key words “provide relief” consequent to change in law appearing in Article 12.1.1. It may be noted at this very stage that the language employed in the PPAs at hand, using the above noted expression, is materially distinct from the one seen in corresponding Article 13 on change in law in Gujarat Bid-01 PPA which was subject matter of denial of carrying cost in the cases of Adani Power Ltd (supra) and GMR Warora Ltd. (supra). Concededly, however, the words “the purpose

of compensating the party affected by such change in law is to restore ... the affected party to the same economic position as if such change in law had not occurred”, as appearing in the Haryana PPA are missing here. The question that arises is as to whether this renders the PPAs at hand one which do not at all contain the restitutionary provision. The answer to this question, in our considered view, depends on the construction that is to be placed on the words “provide relief”

67. There is no contest to the proposition that grant of carrying cost is affording to the party affected the time value of money. The expressions “carrying cost” and “time value of money” have been defined in *P Ramanatha Aiyar Advanced Law Lexicon*, as under:

.....

68. In *Indian Council of Enviro-Legal Action v. Union of India & Ors.* (2011) 8 SCC 16, the Supreme Court had ruled that compensation ought to be granted on compound interest basis as it takes into account, the time value of money and the inflationary trends, which is the true spirit of restitution of the affected party. We may quote the following passage.....

69. This principle has been reiterated and consistently applied in subsequent decisions by the Supreme Court, illustratively in judgments reported as *Torrent Power Limited v. GERC & Ors.*, 2019 SCC OnLine APTEL 110; *Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr.* 2022 SCC OnLine SC 1068; and *Vidarbha Industries Power Limited v. Axis Bank Limited* 2022 SCC OnLine SC 841. Pertinently, in *Vidarbha Industries (supra)*, the court held that “the law must ensure that time value of money is preserved, and that delaying tactics in these negotiations will not extend the time set for negotiations at the start”.

70. The appellants SPPDs rightly point out that principle of time value of money has been recognized as an inherent attribute of “financial debt” by the provision contained in Section 5(8) of the *Insolvency Bankruptcy Code, 2016*. Further, it needs to be noted here that principle of restitution is now part of the regime on change in law reflecting public policy, as introduced by the *Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* providing as under:

“3. Adjustment in tariff on change in law.

(1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.”

[Emphasis supplied]

71. Restitution is a principle of equity which is generally invoked by the adjudicatory authorities – Courts and Tribunals – to render substantial justice and, in this context, we may quote the following observations of Supreme Court in judgment reported as *South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors.* (2003) 8 SCC 648:

.....

72. As ruled in above mentioned case, absence of prohibition in law or contract against award of interest to recompense for delay in payment is also significant. As already quoted earlier, in the case of *Uttar Haryana Bijli Vitran Nigam Ltd (supra)*, the Supreme Court has upheld the view that in terms of restitutionary principle, the affected party is to be given the benefit of restitution “as understood in civil law.

73. The claim arising out of change in law provisions, across all kinds of PPAs under bidding route, is essentially a claim for compensation, the objective being to relieve the affected party of the impact of change in law on its revenues or cost or by way of additional expenditure. The word “compensation” simply means anything given to make things equal in value, anything given as an equivalent, to make amends for loss or damage.

74. As has been pointed out, carrying cost, wherever allowed, has been granted generally at the rate of interest prescribed for Late Payment Surcharge (“LPS”) in as much as, it also relates to amount paid towards deferred payments. Hon’ble Supreme Court in a recent decision rendered on 24.08.2022 in *Uttar Haryana Bijli Vitran Nigam Ltd. &Anr. v. Adani Power (Mundra) Ltd. &Anr.* 2022 SCC OnLine SC 1068, has observed that since the funds arranged by the developer are based on interest rate framework followed by scheduled commercial banks, the affected developer ought to be compensated in the same way.

75. The cardinal rule of interpretation is that words have to be read and understood in ordinary, natural and grammatical meaning. [*S. Ganapathraj Surana v. State of T.N.* 1993 Supp (2) SCC 565]. The crucial words are “provide relief”. The word relief is defined by *Black’s Law Dictionary* as under:

“Deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity. It may be thus used of such remedies as specific performance, or the reformation or rescission of a contract.”

76. The meaning of the expression “relief”, explained in *P Ramanatha Aiyar’s Advanced Law Lexicon* is similar:

“Relief:

(a) Deliverance from some hardship, burden or grievance; legal redress or remedy; the lightening or removal of any burden.

(b) Aid or assistance given to those in need, especially, financial aid provided by the state.

(c) The redress or benefit, especially equitable in nature (such as an injunction or specific performance), that a party asks of a Court.—Also termed remedy. (*Black, 7th Edn., 1999*)

(d) Legal remedy for wrongs..

(e) “Relief” means the remedy which a Court of Justice may afford in relation to some actual or apprehended wrong or injury. [5 A. 345 (FB)]

(f) The word “relief” necessarily implies the pre-existence of a wrong. An action is not given to one who is not injured, ‘actio non datur non dammi ficato’. [33 Bom. 509 : 11 Bom LR 85 : 5 MLT 301 : 2 IC 701]”

77. As is vivid from above, the word “relief” is akin to the word “(legal) redress” or “remedy”. *Advanced Law Lexicon* defines the said expressions as under:

“Redress:

“To set right; to compensate; to make amend to; relief; reparation. Redress is said only with regard to matters of right and justice. ..

The object of civil law is the redress of wrongs by compelling compensation or restitution: the wrongdoer is not punished, he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss..”

Remedy:

“(a)The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.

(b)Adequate remedy at law means a remedy that affords complete relief with reference to the particular matter in controversy, and is appropriate to the circumstances of the case..

(c)A remedy is anything a Court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are judgments that plaintiffs are entitled to collect sums of money from defendants and orders to defendants to refrain from their wrongful conduct or to undo its consequences..

(d)As a legal term means to recover a debt or enforce a right; a mode prescribed by law to enforce a duty or redress a wrong; that which gives relief to the party aggrieved; the means by which the obligation is effectuated; the means employed to enforce a right or redress an injury.. (e)A remedy is simply the means by which the obligation or the corresponding action is effectuated.”

78. *The use of the word “relief” in the context of adjudicatory process, simply means the remedy which the adjudicatory forum may afford “in regard to some actual or apprehended wrong or injury” or something which a party may claim as of right, or making the affected party “feel like easing out of ... hardship”. [Sarsuti v. Kunj Behari Lal, 1883 SCC On Line All 85; Santhamma v. Kerala State 2019 SCC On Line Ker 1265; Commissioner of Income-Tax v. R.B. Jodhamal Kuthiala, 1963 SCC On Line Punj 403; Dipti Aggarwal v. Ashish Chandra, 2017 SCC OnLine Cal 8835; Mewar Sugar Mills Ltd. v. Chairman Central Board of Direct Taxes and Ors. (09.10.1998 - DELHC)]. In Kavita Trehen v. Balsara Hygiene Products Ltd AIR (1995) SC 441, it was held by the Supreme court that jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.*

79. *While construing the contract, purposive interpretation of its terms is requisite [Nabha Power Limited vs. Punjab State Power Corporation Limited & Anr. (2018) 11 SCC 508]. This principle must be borne in mind while comprehending the scope and width of expression “provide relief” used in Article 12.2.2 in the PPA. For this, the statutory framework, as indeed the contractual clauses, will have to be kept in consideration.*

80. *The Central Commission is the sector regulator vested with wide powers to act in furtherance of the objectives enshrined in the Electricity Act, 2003. Section 61 of the said enactment guides its functions expecting the authorities established by this legislation to follow “commercial principles”, act so as to ensure optimum returns on the investments, promote generation from renewable sources of energy and, most importantly, strike a balance between consumers’ interest and recovery of cost of electricity in a reasonable manner.....*

81. *It is in this light that Hon'ble Supreme Court in the case of Energy Watchdog (supra) ruled, albeit in the context of Section 63, that the Regulatory Commission must exercise its functions in accordance with law and guidelines and in situations where no such guidelines exist, it may avail of its "general regulatory powers" under Section 79(1)(b).*

82. *We have already noted that the PPAs which were subject matter of decisions in the case of Adani Power Ltd (supra) and GMR Warora Ltd (supra) contained change in law clauses structured differently from the shape in which they occur in the present PPAs, the words "provide relief" not having been used in the former. The judgment dated 13.04.2018 of this tribunal in Adani Power Ltd.(supra) did not even consider the question as to whether the principle of time value of money would apply in examining the impact of change in law once change in law had been approved. The said decision for present purpose is, thus, sub silentio. When the judgment in the said case was carried in appeal to the Hon'ble Supreme Court leading to decision reported as Uttar Haryana Bijli Vitran Nigam Ltd (UHBVNL) (supra), the challenge was not in relation to what had been denied by this tribunal as the first appellate forum and, therefore, it is not correct to say that the issue stands settled by the said judgment. We are, at the same time, conscious of the fact that while upholding the relief to the extent granted in the case of Adani Power Ltd (supra), the Supreme Court by judgment reported as UHBVNL (supra) had observed that it would be fallacious to say that the claim of restitution was being put forward "on some general principle of equity", the amount of carrying cost in that case being "relatable to Article 13 of the PPA" (the change in law clause).*

83. *In the present cases, the claim for compensation of SPPDs is primarily founded not on principles of equity but on the contractual clause stating that the affected party is entitled to approach the Commission which shall "provide relief" in relation to the impact of the change in law event if it has resulted in "any additional recurring /non-recurring expenditure". The purpose of the change in law clause in the PPAs is to relieve the SPPDs of the additional burden. Since the impact of the new tax (GST or Safeguard Duty on Imports, as the case may be) would come from the date of enforcement of the new laws, the relief intended to be afforded under the contracts cannot be complete unless the said burden is allowed to be given a pass through from the date of imposition of the levy. Unlike the PPA in UHBVNL (supra) wherein the phraseology of change-in-law provision was exhaustive, the words "provide relief" in present PPAs are open ended, not qualified in any manner so as to be given a restrictive meaning in order to treat the date of adjudication of the claim by the regulatory authority as the effective date or to justify denial of carrying cost burden for the period anterior thereto. In our reading, the expression "provide relief" is of widest amplitude and cannot be read to limit its scope the way the contesting respondents seek to propagate or the way the Central Commission has determined.*

84. *It is in the above context that we accept that the regulatory powers of the Central Commission ought to have been properly exercised to do complete justice to the claims for compensation it having been denied by depriving the SPPDs of their legitimate expectation of relief vis-à-vis the burden of carrying cost as well, rendering the dispensation partially unfair.*

85. *There is one more justification for the view we are taking in the matter and that stems from the provision contained in Section 70 of Indian Contract Act, 1872 which relates to the obligation of person enjoying benefit of a non-gratuitous act.*

86. *It was pointed out, and there was no denial offered, that the respondent distribution licensees had been deriving benefit of non-payment of GST component during the period the claims of change in law were pending adjudication before the*

Central Commission. As noted earlier, it is the burden of the SPPDs to pay (to the revenue) the new levies from the date(s) of enforcement of the corresponding laws.

87. As pointed out by learned counsel for Mahoba, under the PPA there is an obligation on the part of SPPDs to ensure “continuance of supply of power throughout the term of Agreement”. It is inherent in this that SPD, in order to continue to supply, must reconfigure or repower the plant, if so required, by installing additional modules after the COD since the contractual clause does not create any distinction as to expenditure pre or post COD, for purposes of change-in-law compensation. The plea for relief concerning post COD cannot be rejected, the expenditure incurred being not meant to be gratuitous, the intent instead being to discharge contractual responsibilities. We may quote the following passage from judgment of Hon’ble Supreme Court in *State of West Bengal v. BK Mondal*, AIR 1962 SC 779, in the context of Section 70 of the Indian Contract Act, 1872

88. The procurers cannot derive undue benefit on this account, not the least at the cost of the SPPDs who could never conceivably have intended to discharge their tax burden as a gratuitous act. Since the burden of carrying cost is a consequence directly flowing from the change in law event, the relief in such regard cannot be complete unless this part of the additional expenditure is also allowed as pass-through.

32. The relevant provisions of the TSA dated 24.6.2015 are extracted as under

“12.1 Change in Law

12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any income to the TSP:

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- A change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any competent Court of Law;
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- A change in terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP;
- Any change in the Acquisition Price or;
- Any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.”

12.2 Relief for Change in Law:

12.2.1 During Construction Period

During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

- For every cumulative increase/decrease of each Rupees Three Crore Seventy Lakh (Rs. 3,70,00,000/=) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.

12.2.2 During the Operation Period

During the Operation Period, the compensation for any increase/decrease in revenues shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if the increase/decrease in revenues or cost to the TSP is In excess of an amount equivalent to one percent (1%) of Transmission Charges in aggregate for a Contract Year."

12.2.3 For any claims made under Articles 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to rights of appeal provided under applicable Law."

33. Article 13 of the Gujarat Bid - 01 PPA dated 6.2.2007 deals with Change in Law and is extracted for reference as under:

"13.1 Definitions

In this Article 13, the following terms shall have the following meanings:

13.1.1 "Change in Law" means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline:

- i. the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulation, notice, circular, code, rule or direction by any Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies, etc., or*
- ii. the imposition by any Governmental Instrumentality, which includes the Government of the State where the project is located, of any material condition in connection with the issuance, renewal, modification, revocation or non-*

renewal (other than for cause) of any Consent after the date of this Agreement.

that in either of the above cases

- a) results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on water, primary fuel used by the generating plant, the generation of electricity (leviable on the final output in the form of energy), sale of electricity and,
- b) relating to consents/compliance pertaining to environment results in any change in costs or revenue;

13.1.2 "Competent Court" means: the Supreme Court of India or the Appellate Tribunal of Electricity or the High Court of Gujarat, or the Appropriate Commission.

13.2 Tariff Adjustment Payment for Change in Law

13.2.1 The Seller shall have to move the Appropriate Commission to ascertain the impact of any Change in Law on the Seller's revenues and costs. The Seller shall be responsible for submission and resolution of petition for such Tariff Adjustment for Change in Law. If the Seller's fails to move the Appropriate Commission, the Procurer may, at its option, take up the matter with the Appropriate Commission.

13.2.2 If a Change in Law results in the Seller's costs directly attributable to the Project being decreased or increased by one percent (1.0%) of the estimated revenue from the Electricity for the Contract Year (considering the tariff quoted in that Contract Year and the energy corresponding to 80% of the Contracted capacity and for the purpose of above calculations the quoted tariff will be as quoted by the Seller) for which such adjustment becomes applicable or more, during Operating Period, the Tariff Payment to the Seller shall be proportionately increased or decreased.

13.2.3. The Procurer or the Seller, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect all increases or decreases till the date of such certificate.

13.2.4 The adjustment in Monthly Tariff Payment for reasons attributable to Article 13.2. shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law;
- (ii) the date of order/judgement of the Competent Court, if the Change in Law is on account of a change in interpretation of Law;
- (iii) the date of impact resulting from the occurrence of Article 13.1.1 (ii)

13.2.5 The Payment of Change in Law shall be claimed through Supplementary bill as mentioned in Article 11.8 for the period for which such Change in Law is applicable while the Monthly Bill for such periods have already been raised by the Seller. For other bills, payment for Change in Law shall be claimed as a separate component of the Monthly Bill."

34. Needless to say, the language employed in the TSA dated 24.6.2015 is also materially distinct from the one seen in corresponding Article 13 on Change in Law in Gujarat Bid-01 PPA which was subject matter of denial of carrying cost in the cases of Adani Power Ltd. (supra).

35. It is reiterated that the APTEL has directed the Commission to take a fresh view on the issue of carrying cost in light of the law developed on carrying cost based on the previous judgments including the Parampujya judgment dated 15.9.2022. While allowing the claim for carrying cost in the Parampujya judgment, the APTEL granted relief not on principles of equity but on the interpretation of contractual terms. Thus, this would be the binding principle for adjudication of the present issue as regards the issue of carrying cost is concerned. Accordingly, we proceed to deal with the present matter in terms of the provisions of the TSA.

36. Since the Change in Law claims in the present Petition pertain to Construction period, the relevant Article for relief is Article 12.2.1 (“During Construction Period”). It is noted that not only the word ‘Relief’ is used in the heading of Article 12.2 (“Relief for Change in Law”), Article 12.2.4 gives meaning to relief envisaged in the Article 12.2 by using the term ‘compensation’. The text ‘determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2’ used in Article 12.2.4 indicates that the relief envisaged in Article 12.2.1 and 12.2.2 is a compensatory relief for Change in Law.

37. Further, Article 12.2.1 prescribes compensation towards increase in project cost during construction period in terms of increase in non-escalable transmission charges. However, if the impact of Change in Law continues in the operating period or an event of Change in Law occurs in operating period, the responsibility of

determination of 'compensation' rests with the Appropriate Commission under Article 12.2.2 of the TSA. It is for such situations that the APTEL in Parampujya judgment has observed that the Commission ought to exercise its regulatory powers under Section 79(1)(b) to do complete justice to the claims for compensation.

38. It is evident that the TSA in the present matter provides a detailed mechanism for compensation in terms of impact of relief to be granted during the construction period and operating period. Whereas, the Gujarat Bid 01 PPA only envisaged seller to approach the Appropriate Commission to ascertain the impact of any Change in Law on the Seller's revenues and costs. The terms 'relief', 'compensation' and the manner of providing relief is completely absent in Bid 01 PPA. Thus, the construction of the Change in Law provision of the present TSA differentiates itself from the Gujarat Bid 01 PPA.

39. In light of the above, the question that arises is whether carrying cost can be granted in accordance with provisions of Article 12.2 of the TSA. The APTEL has observed in the Parampujya judgment that the judgment dated 13.4.2018 of the APTEL in Adani Power Ltd.(supra) did not consider the question as to whether the principle of time value of money would apply in examining the impact of Change in Law once Change in Law had been approved. However, the same needs to be considered for the present matter in light of the subsequent development of law on carrying cost, provisions of Article 12.2 of the TSA and, particularly, in accordance with the following guiding principles laid down in the Parampujya judgment.

- (a) the use of the word "relief" in the context of adjudicatory process, simply means the remedy which the adjudicatory forum may afford "*in regard to some actual or apprehended wrong or injury*" or something which a party may claim

as of right, or making the affected party “*feel like easing out of ... hardship*”. [Sarsuti v. Kunj Behari Lal, [1883 SCC OnLine All 85]; Dipti Aggarwal v. Ashish Chandra, [2017 SCC OnLine Cal 8835]. In Kavita Trehen v. Balsara Hygiene Products Ltd [AIR (1995) SC 441], it was held by the Supreme court that jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.

(b) the word ‘compensation’ simply means anything given to make things equal in value, anything given as an equivalent, to make amends for loss or damage.

(c) Grant of carrying cost is affording to the party affected the time value of money. [Indian Council of Enviro-Legal Action v. Union of India & Ors. (2011) 8 SCC 16; Torrent Power Limited v. GERC & Ors., [2019 SCC OnLine APTEL 110]; Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Ltd. & Anr. [2022 SCC OnLine SC 1068]. In Vidarbha Industries Power Limited v. Axis Bank Limited [2022 SCC OnLine SC 841], the Hon’ble Supreme Court held that “*the law must ensure that time value of money is preserved, and that delaying tactics in these negotiations will not extend the time set for negotiations at the start*”.

(d) Principle of restitution is now part of the regime on Change in Law reflecting public policy [*Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021*].

(e) Restitution is a principle of equity which is generally invoked by the adjudicatory authorities – Courts and Tribunals – to render substantial justice. Absence of prohibition in law or contract against award of interest to

recompense for delay in payment is also significant [*South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors. (2003) 8 SCC 648*].

(f) In terms of restitutionary principle, the affected party is to be given the benefit of restitution “*as understood in civil law*” [*Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) v. Adani Power Limited and Ors. (2019) 5 SCC 325*].

(g) The claim arising out of Change in Law provisions, across all kinds of PPAs under bidding route, is essentially a claim for compensation, the objective being to relieve the affected party of the impact of Change in Law on its revenues or cost or by way of additional expenditure.

(h) Jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands. [*Kavita Trehan v. Balsara Hygiene Products Ltd AIR (1995) SC 441*].

40. Change in Law has been defined in the TSA dated 24.6.2015 as “*occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring / non-recurring expenditure by the TSP or any income to the TSP*”. Accordingly, an event of Change in Law may result into additional recurring as well as non-recurring expenditure or income for the TSP. The Commission has allowed various Change in Law events to the Petitioner vide order dated 16.6.2021 and granted relief in terms of increase in non-escalable transmission charges under Article 12.2.1 of the TSA. As regards carrying cost, the APTEL in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 observed that there could be substantial time lag between the occurrence of a Change in Law event and approval by the Commission during which the generator had to incur additional expenses during the period of adjudication of Change in Law in the form of working capital to cater to the requirement

of impact of Change in Law event in addition to the expenses made due to Change in Law. The relevant extract of the judgment is as under:

ix In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial.

41. Similar observations regarding requirement of additional finances to meet the expenditure incurred on account of Change in Law have been made by Hon'ble Supreme Court of India in the judgment dated 24.8.2022 in *Uttar Haryana Bijli Vitran Nigam Ltd. &Anr. v. Adani Power (Mundra) Ltd. &Anr.* [2022 SCC OnLine SC 1068] as under:

“17. In the instant case, the respondent No. 1 – Adani Power had to incur expenses to purchase the FGD and install it in view of the terms and conditions of the Environment Clearance given by Ministry of Environment and Forests, Union of India, in the year 2010. For this, it had to arrange finances by borrowing from banks. The interest rate framework followed by Scheduled Commercial banks and regulated by the Reserve Bank of India mandates that interest shall be charged on all advances at monthly rests. In view of the matter, the respondent No. 1 – Adani Power is justified in stating that if the banks have charged it interest on monthly rest basis for giving loans to purchase the FGD, any restitution will be incomplete, if it is not fully compensated for the interest paid by it to the banks on compounding basis.”

42. Thus, the requirement of additional finance is a recurring expense during the operating period from the COD of the project till approval of Change in Law by the Commission. The said recurring expense, namely carrying cost flows directly out of Change in Law event and is nothing but time value of money. Article 12.2.2 is of wide amplitude which allows the Commission to determine compensation for Change in Law without any prohibition on award of interest/carrying cost to recompense for delay in payment [South Eastern Coalfields Ltd v. State of Madhya Pradesh & Ors. [(2003)

8 SCC 648]. Denial of carrying cost would defeat the objective of compensatory relief envisaged in Article 12.2.2 read with Article 12.2.4 in the operating period.

43. The Petitioner is thus entitled to receive relief in terms of carrying cost in order to be fully compensated during construction as well as operating period in accordance with Article 12.2.1 read with Article 12.2.2 and Article 12.2.4 of the TSA.

44. The Petitioner has claimed carrying cost at the rate of Late Payment Surcharge. In this regard, the Petitioner has relied on the judgment dated 22.03.2022 in Rattan India Power Limited vs. Maharashtra Electricity Regulatory Commission and Anr., Appeal Nos. 118 of 2021 and 40 of 2022 of the APTEL.

45. We have considered the submission made by the Petitioner. We are of the considered opinion that since the carrying cost is allowed on the principle of compensation for the loss suffered by the Petitioner on account of time lag in adjudication of the Petition, the rate of carrying cost needs to be deliberated in light of rate of interest for the working capital arranged by the Petitioner.

46. In this regard, the Commission in its order dated 17.9.2018 in Petition No. 235/MP/2015 (AP(M)L v. UHBVNL & Ors.) had decided the issue of carrying cost as under:

“24. After the bills are received by the Petitioner from the concerned authorities with regard to the imposition of new taxes, duties and cess, etc. or change in rates of existing taxes, duties and cess, etc., the Petitioner is required to make payment within a stipulated period. Therefore, the Petitioner has to arrange funds for such payments. The Petitioner has given the rates at which it arranged funds during the relevant period. The Petitioner has compared the same with the interest rates of IWC as per the Tariff Regulations of the Commission and late payment surcharge as per the PPA as under:

<i>Period</i>	<i>Actual interest rate paid by the Petitioner</i>	<i>Working capital interest rate as per CERC Regulations</i>	<i>LPS Rate as per the PPA</i>
<i>2015-2016</i>	<i>10.68%</i>	<i>13.04%</i>	<i>16.29%</i>
<i>2016-2017</i>	<i>10.95%</i>	<i>12.97%</i>	<i>16.04%</i>
<i>2017-2018</i>	<i>10.97%</i>	<i>12.43%</i>	<i>15.68%</i>

25. It is noted that the rates at which the Petitioner raised funds is lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since, the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.

26. The Petitioner shall work out the Change in Law claims and carrying cost in terms of this order. As regards the carrying cost, the same shall cover the period starting with the date when the actual payments were made to the authorities till the date of issue of this order. The Petitioner shall raise the bill in terms of the PPA supported by the calculation sheet and Auditor's Certificate within a period of 15 days from the date of this order. In case, delay in payment is beyond 30 days from the date of raising of bills, the Petitioner shall be entitled for late payment surcharge on the outstanding amount."

47. In line with above order of the Commission, in the instant case, the Petitioner shall be eligible for carrying cost at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the TSA would kick in if the payment is not made by the Respondents.

48. It is pertinent to mention that in the Parampujya case, the Hon'ble Supreme Court vide Order dated 12.12.2022 in Civil Appeal No.8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. v. Parampujya Solar Energy Pvt. Ltd. & Ors. has held as under:

"2. Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders."

Thus, the directions with regard to carrying cost in Paragraph 49 of this order which were issued in the light of the principles decided by APTEL in judgement dated 15.9.2022 in Appeal No.256 of 2019 (Parampujya Solar Energy Ltd Vs. CERC) & batch appeals shall not be enforced and will be subject to further orders of the Hon'ble

Supreme Court in Civil Appeal No. 8880 of 2022 in Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors.

49. Apart from the above, all other terms and conditions of the order dated 16.6.2021 in Petition No. 453/MP/2019 shall remain unaltered.

50. In terms of the above order, the directions of the APTEL in its judgement dated 27.9.2022 in Appeal No. 238 stand implemented.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member